

N.Y.S.D. Case #
11-cv-7968(JPO)

13-0511-cv
In re Agnico-Eagle Mines Ltd. Securities Litigation

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of October, two thousand and thirteen.

PRESENT:

PIERRE N. LEVAL,
PETER W. HALL,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

USDC SDNY
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DOC #:
DATE FILED: October 24, 2013

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FORSTA AP-FONDEN,

Plaintiff-Appellant,

JEROME STONE, Individually and on behalf of all others similarly situated,
CHRIS HASTINGS, Individually and on behalf of all others similarly situated,

Plaintiffs,

-v.-

No. 13-0511-cv

AGNICO-EAGLE MINES LTD., SEAN BOYD, EBERHARD SCHERKUS,

Defendants-Appellees,

AMMAR AL-JOUNDI, DAVID GAROFALO,

Defendants,
-----X

FOR APPELLANT:

David L. Wales, (Ann M. Lipton, Adam D. Hollander, Evan M. Berkow, *on the brief*),
Bernstein Litowitz Berger & Grossmann LLP,
New York, NY.

FOR APPELLEES:

Irwin H. Warren, (Miranda S. Schiller, Evert J. Christensen, Jr., Stacey A. Harkey, *on the brief*),
Weil, Gotshal & Manges LLP, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Oetken, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is **AFFIRMED**.

Plaintiff-Appellant Första AP-Fonden (“Appellant”), the court appointed Lead Plaintiff, appeals the District Court’s January 14, 2013 decision granting the Defendants-Appellees’ motion to dismiss the Plaintiffs’ putative class action in its entirety. The Consolidated Securities Class Action Complaint alleges that Defendants-Appellees Agnico-Eagle Mines, Ltd. (“Agnico”), Sean Boyd (“Boyd”),¹ and Eberhard Scherkus (“Scherkus”)² violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 of the Securities and Exchange Commission (“SEC”), 17 C.F.R. § 240.10b-5, by knowingly or recklessly issuing false and misleading statements which at first concealed and later misleadingly minimized structural geological risks to Agnico’s operation of its Goldex Mine. The Complaint also asserts a claim under Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), against Boyd and Scherkus. We assume the parties’ familiarity with the underlying facts, the procedural history, and the issues presented for review.

We review *de novo* a district court’s grant of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See Kleiman v. Elan Corp., PLC*, 706 F.3d 145, 152 (2d Cir. 2013).

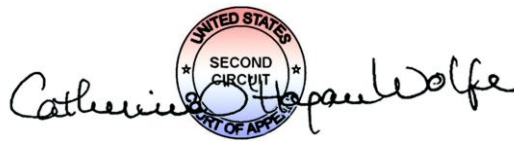
¹ Agnico’s Vice Chairman and Chief Executive Officer (“CEO”) at all times relevant to the Complaint.

² Agnico’s President and Chief Operating Officer (“COO”) during the Class Period—July 28, 2010 to October 19, 2011.

Having conducted an independent and *de novo* review of the record, we affirm the judgment of the District Court substantially for the reasons articulated in its thorough opinion of January 14, 2013. *See In re Agnico-Eagle Mines Ltd. Sec. Litig.*, No. 11 Civ. 7968, 2013 WL 144041 (S.D.N.Y. Jan. 14, 2013).

We have examined the remainder of Appellant's arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the District Court entered on January 14, 2013.

FOR THE COURT,
Catherine O'Hagan Wolfe, Clerk of Court

The block contains a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written over a circular official seal. The seal has a red outer ring with the words "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom, separated by two stars. Inside the ring, the words "SECOND CIRCUIT" are written in blue.

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

This block contains a second instance of the handwritten signature "Catherine O'Hagan Wolfe" over the same circular seal as described in the previous block. The seal is partially obscured by the signature.